In the Supreme Court of the United States

October Term, 1955

No. 900

T. E. GOODIN, SR., *Petitioner*

vs.

CLINCHFIELD RAILROAD COMPANY, BLUE RIDGE LODGE NO. 816 OF BROTHERHOOD OF RAILROAD TRAINMEN, GRADY BRIGGS, RODDY L. STEWART, J. O. GOFORTH, STEVE TOLBERT, JAKE E. WEBB, EDWARD H. TAYLOR, PAUL BOOHER, HARRY HOLLIFIELD, H. CLAY HOWARD, C. C. SLAGLE, J. L. MASTERS, FLOYD D. SPARKS, W. D. SLAGLE, SR., AND JAMES GODSEY, *Respondents.*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Every question presented by the petition for a writ of certiorari filed herein was considered and disposed of adversely to Petitioner's several insistencies in *McMullans v. Kansas, Oklahoma & Gulf Railway Co., et al.* 229 F.2d 50 (C.C.A. 10), cert. den. April 30, 1956, No. 759, —— U.S. ——.

In this suit Petitioner, T. E. Goodin, Sr., likewise challenges the validity of an amendment to an existing collective bargaining

contract effected following negotiation between Respondents, Blue Ridge Lodge No. 816 of Brotherhood of Railroad Trainmen (herein called the Union) and Clinchfield Railroad Company (sometimes referred to herein as the "Carrier") providing for the retirement of all employees in the class represented by the Union for collective bargaining purposes, upon attainment of age seventy.

It would seem material to review the events preceding the consummation of the contract provision under attack.

Discussions among members of the Union, with respect to the propriety of seeking to include in its collective bargaining agreement with the Carrier a compulsory retirement agreement, had begun as early as January, 1953 (29a). In February of 1953, a meeting of the Union was held, to which representatives of a labor organization engaged in representing certain classes of employees on the Southern Railroad were invited for the purpose of obtaining the benefit of the viewpoint of such labor organization on the subject of compulsory retirement, in the light of the experiences had by such labor organization and its members under the compulsory retirement plan then in effect on the Southern Railroad (29a). At this meeting the Union deemed it appropriate to postpone action on the compulsory retirement subject for a period of sixty days in order to insure full and mature consideration of this problem by all of its members and the class of employees it represented. Not content with this period of discussion, the Union undertook to obtain a formal expression of viewpoint from the class of employees it represented upon the subject of compulsory retirement by causing to be spread a referendum. All members of the Union were issued ballots, as were non-members, including Petitioner. Petitioner voted along with the members of the Union, but his vote (and that of other non-members) was treated as advisory and, while counted, was not tabulated (aa 2, 3). The tabulation of votes cast in the foregoing October referen-

dum indicated an overwhelming sentiment in favor of the negotiation of a compulsory retirement agreement (a38). It was only following this referendum that the Union served written notice, pursuant to the Railway Labor Act (45 U.S.C.A. Sec. 151, et seq.) upon the Carrier of its desire to confer and bargain upon the subject of compulsory retirement, with a view to incorporating by way of amendment to the existing collective contract, a provision requiring retirement at a predetermined age.

During this entire period the topic of compulsory retirement was "discussed generally between all crafts of the employees of the Railroad Company" and was a "prime topic of conversation." (aa 2). In view of the evident interest in the proposed negotiation for a compulsory retirement plan, the Union decided to obtain the fullest possible expression from the employees it represented, and accordingly cause a second referendum to be spread in November, 1953, in which ballots were issued to every employee represented by the Union, whether a member or not, upon the proposition of establishing a compulsory retirement age of seventy years (31a). Said ballot was issued to Petitioner, who, along with members of the Union, voted in said referendum. The result of the November referendum conformed to the results of the prior balloting and disclosed the unwavering approval of the great majority of the employees represented by the Union of the proposed compulsory retirement plan. Subsequently, negotiations were begun between the Union and the Carrier, which culminated on February 1, 1954, in an amendment to the existing collective bargaining contract, requiring retirement at age seventy (32a, 33a). During the interval between the October and November referenda Petitioner and his co-plaintiff below, under dates of November 2, 1953, and November 27, 1953, (77a, 81a), respectively, advised Respondents, through counsel, that they deemed the proposed collective bargaining action arbitrary and illegal, and, following consummation of the compulsory retirement amendment to the

contract here involved, instituted suit in the United States District Court for the Eastern District of Tennessee, asserting the invalidity and illegality of such agreement upon a number of theories dealt with in the reported opinion of the District Court at 125 F.Supp. 441. It is, however, fair to say that the three principal objections urged by Petitioner to the compulsory retirement agreement were:

1. That compulsory retirement was not an appropriate subject for collective bargaining under the Railway Labor Act (45 U.S.C.A. Sec. 151, et seq).

2. That the Railroad Retirement Act (45 U.S.C.A. 228(b)) had preempted the field of retirement in the railroad industry and excluded the right of private parties to contract with respect to any facet of retirement.

3. That the Union had breached its statutory duty to Petitioner and his co-plaintiffs below by acting in bad faith, in that the Union had failed to accord the complaining employees it represented fair and impartial representation.

The case came on before the District Court following Answers to the Complaint, Motions for Judgment on the Pleadings (which were converted by the District Court to Motions for Summary Judgment), and after trial on the merits, following which the District Judge, in a comprehensive opinion, considered in detail Petitioner's objections to the compulsory retirement agreement, and rejected each and every one of them upon the application of settled legal principles or upon a finding of failure of proof by Petitioner and his co-plaintiffs below, and indeed upon an affirmative finding that the evidence was against the insistences of Plaintiffs below and Petitioner here. Upon appeal to the United States Court of Appeals for the Sixth Circuit, that Court in a *Per Curiam* opinion reported at 229 F.2d 579, in effect adopted the District Court's opinion.

ARGUMENT

POINT 1.

THE PETITION SHOULD BE DENIED BECAUSE THE DECISION OF THE COURT OF APPEALS CORRECTLY APPLIED APPLICABLE DECISIONS OF THIS COURT AND IS IN UNQUALIFIED ACCORD WITH THE UNIFORM JUDICIAL VIEW THAT A COMPULSORY RETIREMENT AGREEMENT, FIXING A REASONABLE RETIREMENT AGE OF SEVENTY YEARS, IS VALID WHEN NEGOTIATED IN GOOD FAITH BY A UNION FUNCTIONING AS THE EXCLUSIVE BARGAINING REPRESENTATIVE FOR A CLASS OF A CARRIER'S EMPLOYEES

A. *Compulsory Retirement Is An Appropriate Subject For Collective Bargaining Under The Railway Labor Act*

The Railway Labor Act, 45 U.S.C.A. 151, et seq., Sec. 52, requires parties subject thereto to bargain with respect to "rates of pay, rules and working conditions" and further requires that every reasonable effort be made to settle all disputes between a carrier and its employees in order to effectuate the primary statutory objective, to-wit: the diminution of labor disputes, the likely effect of which is to impede interstate commerce. It would seem that the statutory terminology *"rates of pay, rules and working conditions,"* coupled with the legislative mandate to parties subject to the Act, to settle "all disputes" would, under the most literal test, require the conclusion that a compulsory retirement agreement is within the bargainable issues contemplated by the Act. It can be said that the frequency with which the retirement issue has presented itself in recent contract negotiations authorizes two observations. First, it is a dispute which, if not settled, could very well lead to the interruptions in commerce the Act was designed to avoid; and second, the establishment of

such a plan plainly creates a "working rule" and, therefore, a "working condition."

In construing the Railway Labor Act, it has not been rare for this Court to employ decisions involving the National Labor Relations Act and to use holdings primarily addressed to one statute interchangeably with problems arising under the other. For example, in *J. I. Case Co. v. N.L.R.B.* 321 U.S. 332, an action involving the National Labor Relations Act, this Court followed decisions in connection with the Railway Labor Act, while in *Order of Railroad Telegraphers vs. Railway Express Agency*, 321 U.S. 342, cases involving the National Labor Relations Act were used in disposing of issues which had arisen under the Railway Labor Act. For, as put in *N.L.R.B. vs. Penna, Greyhound Lines*, 303 U.S. 261, the Congress, in enacting the National Labor Relations Act, had in mind the experience in the administration of the Railway Labor Act and declared that the former was "an amplification and further clarification of the principles" of the latter.

Upon this premise we suggest the persuasiveness of *Inland Steel Co. vs.* N.L.R.B. 170 F.2d 247, cert. den.; 336 U.S. 960. The *Inland* case involved the enforcibility of a National Labor Relations Board order directing the employer there involved to bargain with the statutory representative of its employees with respect to a compulsory retirement agreement proposed for insertion in a collective bargaining agreement. In holding compulsory retirement an appropriate subject for collective bargaining under the National Labor Relations Act, 29 U.S.C.A. Sec. 151, the Court noted that "a termination by discharge is concededly a matter for collective bargaining. To say that termination by retirement is not amenable to the same process could not, in our judgment, be supported by logic, reason or common sense."

The scope of bargaining under the National Labor Relations Act is determined by the statutory phrase, "rates of pay, wages,

hours of employment or other conditions of employment." The Railway Labor Act's counterpart language is "rates of pay, rules and working conditions." The *Inland* holding was grounded upon the Court's approval of the Labor Board's conclusion that . . . *"the retirement pension plan is included in the 'conditions of employment' and is a matter for collective bargaining."* To equate the Railway Labor Act phrase *"working conditions"* with the National Labor Relations Act term *"conditions of employment,"* is to give effect to the construction the language clearly requires and to effectuate the purpose of the enactment to extend the scope of collective bargaining to every possible subject with respect to which a dispute could legitimately arise between a union and a carrier. In fact, in the *Inland* case, the inclusion of a retirement plan within the statutory terms "conditions of employment" was held to be so clear as to "leave little, if any, room for construction." It is worth noting that the dissenting Judge in the *Inland* case concurred in the majority view that "pension and retirement plans constitute part of the subject matter of compulsory collective bargaining under the Act." See also *N.L.R.B. vs. Jacobs Mfg. Co.* 196 F.2d 680, CCA (2).

The denial by this Court of certiorari in the *Inland* case at 336 U.S. 960, would appear to have put at rest the issue of the inclusion of pension and retirement plans under either the phrase "conditions of employment" or "working conditions."

But if not, then squarely in point upon this issue is *McMullans, et al vs. Kansas, Oklahoma & Gulf Railway Co., et al.* 229 F.2d 50, cert. den. April 30, 1956, —— U.S. ——. There, as here, the Court of Appeals had held valid a collective bargaining agreement providing for the compulsory retirement of railroad engineers upon the attainment of age seventy. This Court's denial of certiorari in the *McMullans* case is decisive of the bargainability of compulsory retirement under the Railway Labor Act, and

indeed, as we have hereinabove suggested, of every other question presented by this Petition. See also:

Boget vs. Chicago & Northwestern Railroad Co., (Northern District of Illinois) No. 51 C 902 (1951) R. aa 13—aa 26);

Lamon vs. Georgia, Southern and Florida Railway Co., 90 S.E. 2d 659 (1955);

Flowers vs. Locomotive Firemen and Enginemen, ——— Ga. ———, 37 LRRM 2434 (1956);

Jones, et al vs. Martin, as Trustee of Florida East Coast Railway Co., etc. (S. Dist. Fla.) No. 6795-M, decided April 16, 1956, ——— F. Supp. ———, 37 LRRM 2839.

All of the foregoing authorities are in accord with the view expressed upon the issues involved in the case at bar by the Court of Appeals, and indeed the view of this Court as implied from the denial of certiorari in both the *McMullans* and *Inland Steel* cases, supra.

B. *There Is No Conflict Of Authority Upon The Validity Of Compulsory Retirement Provisions Of The Type Here Involved*

An examination of the holdings of the several Courts which have considered the asserted infirmities attaching to a negotiated compulsory retirement agreement reveals judicial unanimity that such contracts are valid. Petitioner's insistence that this question has not been but should be settled by this Court is repelled by this Court's denial of certiorari in the *McMullans* and *Inland Steel cases.*

Moreover, Petitioner's notion that the Court of Appeals holding here is in direct conflict with *Railroad Retirement Board vs. Alton Railroad Co.*, 295 U.S. 330, and *Smith vs. Texas*, 233 U.S. 630, will not bear scrutiny. The *Alton* case held unconstitutional

an Act of Congress purporting to require involuntary retirement upon a number of grounds clearly not material to the right of private parties to contract with respect to compulsory retirement. Similarly, the *Smith* case is transparently irrelevant, for there this Court held invalid a Texas statute defining as a misdemeanor the employment of any person as a railway conductor in the absence of two years prior service as a freight conductor or brakeman. And in doing so the Court noted that such legislative intervention operated to deny "to many the liberty of contract . . . and operates to establish rules of promotion *in a private employment.*" The *Alton* case and the *Smith* case may be said to stand as a barrier to Federal and State legislation upon employment issues where there is no rational basis in the public interest for legislative intervention. But neither decision touches upon the contract rights of private parties to establish through the collective bargaining instrument reasonable, nondiscriminatory terms and conditions of employment.

C. *By Enacting The Railway Retirement Act, 45 U.S.C.A. 228(b). Congress Did Not Intend To Exclude Private Parties From Contracting With Respect To Retirement*

Petitioner's view that a collective bargaining contract clause stipulating a compulsory retirement age is invalid under preemption principles by reason of the Railroad Retirement Act, 45 U.S.C.A. 228, overlooks both the purpose of such Act and the result of the compulsory retirement agreement. The Railroad Retirement Act provides for the payment of an annuity to qualified employees who have reached the age of sixty-five and who apply for such annuity. *It does not purport to compel retirement at any age.* And, indeed, the *Alton Railroad Company* case, supra, noted that "these matters obviously lie outside the orbit of Congressional power."

It can, accordingly, be said that the compulsory retirement agreement here involved deals with an entirely different subject in a separate field than that with respect to which the Railroad Retirement Act addresses itself. It cannot be argued with validity that as between the Act and the contract clause any of the applicable preemption criteria, viz. "conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment and interference" are applicable. *Hines v. Davidowitz*, 312 U.S. 52, 67. See also *McMullans, et al vs. Kansas, Oklahoma & Gulf Railway Co., et al*, supra, and *Boget vs. Chicago & Northwestern Railroad Co.*, supra.

POINT 2

THE PETITION SHOULD BE DENIED BECAUSE THE RECORD DISCLOSES THAT IN NEGOTIATING THE COMPULSORY RETIREMENT AGREEMENT INVOLVED HERE, THE UNION ACTED FAIRLY, IMPARTIALLY AND IN GOOD FAITH

A. *The "Good Faith" Of The Union Is A Factual Issue Which This Court Will Not Review Upon Certiorari*

It would appear beyond the pale of argument that this Court "is not the place to review a conflict of evidence" and that an issue of "good faith 'can have meaning only in its application to the particular facts of the particular case.'" *N.L.R.B. vs. American National Insurance Co.*, 343 U.S. 395, 410. Despite this well settled rule, Petitioner insists that "bad faith" representation accorded him by the Union operated to vitiate the compulsory retirement agreement. This argument is advanced in order to invoke the rule of *Steele vs. L. & N. Railroad Co.*, 323 U.S. 192, that a labor union, as the statutory representative of a craft, and in making contracts with the carrier, has the duty to "represent non-union or minority union members of the

craft without discrimination, fairly, impartially and in good faith." 323 U.S. at 204. Quite apart from the nonreviewability of this factual issue here is the affirmative finding of fact of the District Court, approved by the Court of Appeals, *"that the Union acted fairly and in good faith in entering into the bargaining agreement with the Railroad on February 1, 1954"* (102a). The "good faith" requirement of the *Steele* case was more than satisfied by the Union as a review of the events preceding the consummation of the compulsory retirement agreement will demonstrate. (See "Statement of the Case," page 3, *supra).*

B. *The Compulsory Retirement Agreement Here Is Not Discriminatory, Despite Any Adverse Effect It Might Have Upon Petitioner*

Our first observation with respect to the asserted discriminatory character of an agreement requiring retirement at age seventy is that such agreement is not discriminatory in point of fact. By its terms it applies to all who are seventy years of age presently or who later attain this age. This view has been sustained by every Court which has considered this question, including this Court, in *McMullans vs. Kansas, Oklahoma & Gulf Railway Co.*, et al., *supra.*

Secondly, while the practical effect of the compulsory retirement agreement may be to immediately displace Petitioner, such fact, standing alone as it does, may not be said to render the contract "discriminatory" in any legal sense. It is settled that "the statutory representative of a craft is not barred from making contracts which may have unfavorable effects on some of the members of the craft represented." *Steele vs. L. & N. Railroad, supra.* This is so if "variations in the terms of the contract" are "based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in

seniority." *Steele vs. L. & N. Railroad, supra.* And among those relevant conditions which have been considered as warranting a contract variation are included differences "based upon such matters . . . *as the fitness, ability or age of the employees.*" *Ford Motor Co. vs. Huffman,* 345 U.S. 330, 339. This is necessarily the rule, since "a wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford vs. Huffman, supra.* To say that retirement age of employees is not a matter with which both a carrier and a union may concern themselves in collective bargaining negotiations in the railroad industry, is to overlook the very nature of that industry and its necessary interest in considerations of public confidence, safety and welfare.

CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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